

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

WARNER MUSIC GROUP CORP., *et al.*

Plaintiffs,

v.

MEGAUPLOAD LIMITED, *et al.*,

Defendants.

No. 1:14cv374
(LO / IDD)

**REPLY BRIEF IN SUPPORT OF
MOTION OF DEFENDANT MEGAUPLOAD LTD.
FOR A STAY PENDING A PARALLEL CRIMINAL PROSECUTION**

Defendant Megaupload Limited (“Megaupload”) has moved for the continuation of the stay of this action for a period of eight months, to April 1, 2015 (Dkt. No. 31). Plaintiffs have responded to that motion, and while not agreeing with Megaupload’s “statements and reasons” for seeking such relief, they nonetheless “do not oppose a time-limited continuation of the stay” provided several conditions are attached (Dkt. No. 34 at 1). Certain conditions have already been ordered (Dkt. No. 27), which are not now disputed. Those conditions were imposed, at Plaintiffs request (Dkt. No. 21), to fully protect their interests during the stay. Plaintiffs nonetheless make the bald assertion that “the equities” justify a stay of only six months (until February 1, 2015), instead of the eight months requested by Megaupload (Dkt. No. 34 at 1-2). Megaupload respectfully submits that continuing the stay for eight months (until April 1, 2015) is warranted in this instance in light of the schedule of extradition case in New Zealand.

In particular, the extradition hearing for the individual defendants has been continued to *February 16, 2015. In re Proceedings to Extradite Kim Dotcom and Others*, [2014] District

Court at North Shore [July 4, 2014] (Exhibit 1). Thus, as of February 1, 2015, the extradition proceedings will not have concluded even at the trial-court level, and another motion to continue the stay would have to be filed in this Court, responded to, and then decided—just two weeks *before* the scheduled extradition hearing. That would be a waste of party and judicial resources. In light of the schedule for the extradition proceedings, Megaupload respectfully submits that the Court should continue the stay in this case until *April 1, 2015*—which is shortly *after* the scheduled extradition hearing date.

Finally, Plaintiffs complain that “more than 2 ½ years have passed since the initiation of the pending criminal action,” as if that somehow tips the balance in favor of a shorter continuation of the stay (Dkt. No. 34 at 2). It does not. First, Plaintiffs were aware of the criminal action as of January 2012, claimed to be crime victims, and yet waited over two years to file their civil suit. Second, the Megaupload website was taken down more than two years ago, halting defendants’ alleged infringing activities. Third, Plaintiffs have been given leave to pursue (and are pursuing or monitoring) asset-freeze litigation in other countries, which provisional remedies, they claimed, were necessary to protect their damages remedies in this action while a stay was in place. Fourth, should any “equities” really warrant lifting the stay prior to April 1, 2015, Plaintiffs will be able to seek immediate and appropriate relief from this Court under the terms of the conditional stay. Therefore, shortening the continuation of the stay from eight to six months would not be necessary to protect Plaintiffs’ putative interests in prosecuting this civil action. No purported “equities” favor a shorter stay at this time.

CONCLUSION

In light of the schedule in the extradition proceedings, Megaupload requests that the Court continue the stay in this case until April 1, 2015, on the same terms and conditions as in the prior stay order (Dkt. No. 27).¹

Dated: July 18, 2014

Respectfully submitted,

/s/ Craig C. Reilly
Craig C. Reilly, Esq. (VSB # 20942)
111 Oronoco Street
Alexandria, Virginia 22314
TEL (703) 549-5354
FAX (703) 549-2604
craig.reilly@ccreillylaw.com

Ira P. Rothken (*pro hac vice* pending)
ROTHKEN LAW FIRM
3 Hamilton Landing
Suite 280
Novato, CA 94949
(415) 924-4250
(415) 924-2905 (fax)
ira@techfirm.net

Counsel for Defendant Megaupload, Ltd.

¹ Megaupload, however, does not waive any defense or procedural protections, including but not limited to defenses of insufficient service of process, lack of personal jurisdiction, and improper venue, nor does Megaupload waive the right to request additional time to file and serve a response under Rule 12 if this motion is denied or when any stay entered in this action expires or is lifted.

CERTIFICATE OF SERVICE

I hereby certify that on July 18, 2014, the foregoing was filed and served electronically by the Court's CM/ECF system upon all registered users:

Thomas G. Hentoff
Eric C. Wiener
Gabriel A. Cohen
Nicholas G. Gamse
WILLIAMS & CONNOLLY LLP
725 12th Street, N.W.
Washington, DC 20005
Counsel for Plaintiffs

/s/ Craig C. Reilly
Craig C. Reilly, Esq. (VSB # 20942)
111 Oronoco Street
Alexandria, Virginia 22314
TEL (703) 549-5354
FAX (703) 549-2604
craig.reilly@ccreillylaw.com
Counsel for Defendant Megaupload, Ltd.